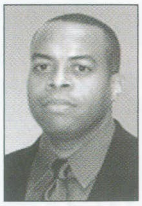
THE WIN^3 OF 2011 GREEN BONUS DEPRECIATION



WHILE RECENTLY assisting a green contractor client whose company installs energy-efficient equipment for commercial buildings, and discussing his understanding of key "green" tax incentives for one of their customers for a renovation project, it became increasingly clear to us that there is a "win-win-win" opportunity for contractors and their customers to take advantage of an unprecedented tax benefit through bonus depreciation. Time is running out, however, and companies should act now.

In the midst of the big compromise in Washington at the end of 2010 that allowed the Federal government to extend the current income tax rates for two additional years, several additional incentives and extensions of tax incentives did not make headlines in the press. These incentives were included in the compromise to encourage companies to make capital investments in their businesses in an effort to boost the national economic recovery efforts.

Behold the power of Bonus Depreciation for 2011! It is a win-win-win for U.S. companies of all sizes and, if used wisely, can provide benefits that can last several years in the future.

You should always consult your tax advisor for specifics of this tax incentive for your or your customer's tax situation. However, in basic terms, bonus depreciation, as defined by the tax code [IRC §168(k)], allows a company to accelerate its future depreciation expenses for qualified assets actively used in the business, if newly acquired within a specified timeframe as established in Section 168.

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Generally, as assets used in business are acquired, they are depreciated over a set period of time (e.g., five, seven, 15 or 20 years, etc.). Bonus depreciation allows a taxpayer to claim "additional" (i.e., accelerated) depreciation during the first year, then depreciate the remaining cost basis of the asset, if any, over the set recovery period based on the asset class category as established by the tax code.

The new law increased bonus depreciation from the 50% level that was already in effect for 2010 acquisitions from the previous tax bill, to an unprecedented 100% bonus depreciation level for qualified assets acquired between Sept. 8, 2010, and Dec. 31, 2011.

For calendar year 2012, the bonus depreciation level returns to 50%; this makes 2011 a special incentive year for businesses to take action by investing in new assets or upgrading existing business equipment and operations.

The 100% bonus depreciation now gives taxpayers the ability to claim all depreciation in the first year instead of reducing the value of the assets over a set period of time based on the asset class. This is an automatic provision for assets acquired during the prescribed timeframe by the tax code; in fact, a company will need to make an election to "opt out" of claiming 100% of the bonus depreciation if it would rather utilize the regular depreciation reduction period.

Examples of assets that qualify for bonus depreciation include (but are not limited to): renewable energy equipment and energy efficiency products such as occupancy and motion sensors for lighting systems, along with furniture, fixtures, business machinery, computer and telecommunications equipment, appliances used in business operations, signage and other business specific property. Assets that do not qualify generally include building structures and certain automobiles.

This also includes land improvements to the exterior of the business property, if applicable. Land improvements are generally considered 15-year tax depreciable assets, and any new improvements acquired or made for upgrades (such as parking area upgrades completed by the end of 2011) also would be eligible for the bonus depreciation deduction.

Please keep in mind that the qualified assets must be newly acquired assets (new assets or at least new to the company) and also can include qualifying property that is self constructed for active use in the business (but not inventory for sale). Also, these assets must be utilized or operated in a company's activities within the United States.

Now that we have an overview of the bonus depreciation incentive, consider the impact of this incentive if, instead of purchasing a fancy new table and high-end chairs for the conference room, a company actually uses the incentive to buy green or energy saving/energy efficient assets. In most cases, these assets will qualify for the bonus depreciation incentive, provided the other requirements to qualify are met by the company.

The first WIN with using the incentive to acquire green assets is the obvious return on investment. For every dollar invested in Energy Star-rated equipment or motion occupancy sensors and other qualifying assets, the same amount is returned in depreciation expense for 2011. In addition, there is no limitation on companies for the level of investment on qualified assets for bonus depreciation. Even if (as a hypothetical), the bonus depreciation expense exceeds the company's income tax liability for 2011, a company, in most cases, can still use the incentive to reduce tax liabilities in previous or future tax years. This is another reason to consult a tax advisor.

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The second WIN is a big picture win for the economic recovery. By investing in capital asset improvements, whether to acquire green assets or not, U.S. companies are utilizing this incentive for the first win of the accelerated depreciation expense to do what the Federal government intended businesses to do — spend and invest. This creates a chain reaction of new orders, new opportunities and (something we can all use) optimism in the marketplace. These actions, in theory, will lead to a stronger economy, we hope, with more well-paying jobs, a thriving economy and a healthier profit internally.

The third WIN comes in the form of reduced energy consumption and reduced operating costs. Energy costs in some businesses can be a top-five expense category. We all need energy to conduct business and operate, but if this incentive can be used to acquire assets that use energy more efficiently, this is a benefit that can have an impact today and in the foreseeable future.

My clients have found that conducting an energy audit for business operations can be a useful tool to establish a baseline of energy consumption. Energy audits can identify key areas of energy consumption and point out action steps and energy-saving equipment that a company can use to reduce costs. In addition, some states and local utilities may be offering rebates and incentives in addition to the Federal tax benefits to further encourage companies to focus on energy reduction.

(These energy-saving measures can include changing human behaviors and how business is conducted. Think of office behavior before and after we began recycling paper, for example.)

With all three WINS, a company can have a shortened return on investment, easily improve its operations and reduce energy consumptions. The key to success here is to act now rather than wait until the end of the year. As with other bonus depreciation windows of opportunity offered by the tax code, if a company wants to take advantage of this incentive, it must own (i.e., have legal title) to the qualifying assets. It is better to place a purchase order now for new, energy-saving or Energy-Star-rated products and equipment rather than place the order on Dec. 31 of this year and the equipment may not arrive until February or March 2012.

As we have passed the midpoint of 2011, the time to act to claim all your WINs is now.

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